

Federal Court



Cour fédérale

Date: 20230202

Docket: IMM-7697-21

Citation: 2023 FC 158

[ENGLISH TRANSLATION]

Montréal, Quebec, February 2, 2023

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

**SAID SAIDJ
KARIMA ZAIR
TINHINANE SAID**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal applicant, Said Saidj, his spouse, Karima Zair, and their minor daughter, Tinhinane Saidj [collectively, the Saidj family], are citizens of Algeria. They are seeking judicial review of a decision of the Refugee Appeal Division [RAD] dated September 23, 2021

[Decision]. The RAD dismissed their appeal from the Refugee Protection Division [RPD] decision and concluded that the Saidj family's refugee protection claim should be rejected because it lacked credibility. Neither the RPD nor the RAD were persuaded that Mr. Saidj and Ms. Zair's conversion to Christianity was sincere and credible.

[2] The Saidj family submits that the Decision is unreasonable because the RAD conducted a selective and erroneous review of the documentary evidence and adopted an erroneous approach in its assessment of the family's conversion to Christianity.

[3] The Saidj family's application for judicial review will be dismissed for the reasons that follow. Having reviewed the evidence that was before the RAD, I see no reason to set aside the Decision. The reasons provided by the RAD show that it took the evidence on the record into account and that its finding regarding Mr. Saidj and Ms. Zair's lack of credibility is justified in light of the facts and law. The Saidj family failed to discharge its burden of proving that the Decision was unreasonable.

II. **Background**

A. ***Facts***

[4] In their claim for refugee protection, Mr. Saidj and Ms. Zair alleged that they had converted to Christianity and had been baptized on February 10, 2016, in Boghni, Algeria. When they converted to Christianity, Mr. Saidj and Ms. Zair renounced Islam, the main religion in Algeria.

[5] Mr. Saidj and Ms. Zair alleged that, following their conversion, they received threats from their family and their neighbours. On December 25, 2017, Mr. Saidj's vehicle was allegedly set on fire by an individual named Ramdane Masaid, a Salafist Islamist, while the Saidj family was at church celebrating Christmas. Mr. Saidj purportedly complained to the police, but no investigation was conducted.

[6] Fearing persecution because of their conversion to Christianity, the Saidj family left Algeria on July 24, 2019. They claimed refugee protection in Canada on September 6, 2019.

[7] The RPD rejected the Saidj family's refugee protection claim on the ground that they were not credible with respect to their conversion to Christianity and their fear of persecution in Algeria.

B. *RAD's decision*

[8] Following its analysis of the evidence, the RAD concluded that the Saidj family's appeal should be dismissed. Like the RPD, the RAD identified the applicants' credibility as the determinative issue in the refugee protection claim.

[9] First, the RAD specified that the reasons the RPD provided in support of its decision were sufficiently clear, precise and intelligible to confirm that the Saidj family's refugee protection claim should be rejected on the ground that their conversion to Christianity had not been established.

[10] In reviewing the relevant evidence and Mr. Saidj and Ms. Zair's testimony—as per its role—the RAD considered that the Saidj family's refugee protection claim should be rejected for

the same reasons as those provided by the RPD, namely, that (i) the Saidj family had not established the path leading to their conversion; (ii) they had cursory knowledge of the Christian religion; (iii) Mr. Saidj had not attended his child's baptism in Canada; and (iv) the pastor's letter contradicted Mr. Saidj's testimony that he had attended church in Canada.

[11] The RAD then acknowledged that the RPD had not analyzed the documentary evidence filed by the Saidj family, including a series of letters and baptism certificates. It corrected that omission by analyzing the documents itself in the exercise of its jurisdiction. The RAD determined, however, that it had to assign little weight to those documents because of a series of flaws they contained, such as the absence of contact information for the people who signed them, which would have helped to confirm their authenticity. The RAD also determined that the documents contained only vague information that was insufficient to support the Saidj family's allegations.

[12] The RAD completed its analysis by stating that even the objective evidence was insufficient because the Saidj family had failed to show a link between that evidence and their personal circumstances.

C. *Standard of review*

[13] The Saidj family and the Minister of Citizenship and Immigration [Minister] are both of the opinion that reasonableness is the applicable standard of review in this case. I agree with them (*Regala v Canada (Citizenship and Immigration)*, 2020 FC 192 at para 5; *Janvier v Canada (Citizenship and Immigration)*, 2020 FC 142 at para 17; *Bouarif v Canada (Immigration,*

Refugees and Citizenship), 2020 FC 49 [Bouarif] at para 9; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [Lawani] at para 13).

[14] The focus of reasonableness review is on the decision made by the administrative decision maker, including both the reasoning process and the outcome (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 83, 87). A reasonable decision is justified by way of transparent and intelligible reasons that show an internally coherent chain of analysis (*Vavilov* at paras 86, 99). The reviewing court must take into account the factual and legal constraints that bear on the decision (*Vavilov* at paras 90, 99), without “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125). The court must instead adopt a posture of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13).

[15] The burden is on the party challenging the decision to show that it is unreasonable. For a decision to be set aside, the reviewing court must be satisfied that there are sufficiently serious shortcomings to render the decision unreasonable (*Vavilov* at para 100).

III. Analysis

[16] The only issue is whether the Decision is reasonable.

[17] The Saidj family submits that the RAD reviewed the documentary evidence selectively and erroneously and that it substituted its own personal knowledge of Christianity for that of Mr. Saidj and Ms. Zair in an abusive manner with the sole purpose of justifying its reasoning. For its part, the RPD allegedly asked questions that were too complex and detailed regarding

Mr. Saidj and Ms. Zair's knowledge of Christianity without taking their personal situation into account. In addition, the RPD and the RAD apparently improperly sought a [TRANSLATION] "triggering event" to justify Mr. Saidj and Ms. Zair's conversion to Christianity.

[18] I do not agree with the Saidj family's arguments, and I am not persuaded that the Decision can be considered unreasonable. As the Minister explained very well at paragraphs 22 to 56 of his Memorandum, the RAD's reasons provide a detailed and rigorous analysis of the evidence that eloquently supports its conclusions regarding Mr. Saidj and Ms. Zair's lack of credibility with respect to their conversion to Christianity.

[19] First, although it mainly deferred to the RPD's analysis of Mr. Saidj and Ms. Zair's credibility, the RAD did listen to the recordings of the testimony and reviewed the evidence. Following its independent analysis, the RAD concluded that the questions were simple and open-ended and allowed Mr. Saidj and Ms. Zair to explain their knowledge and the reasons for their conversion, while taking into account their personal situation and their ongoing church attendance since 2015. Asking to name some prayers or to describe religious holidays does not constitute asking questions that are probing and that stem from a microscopic analysis (*Bouarif* at para 12), especially when an applicant claims, as is the case here, to pray every day and to read the Bible regularly. Like the RPD, the RAD concluded that the answers given by Mr. Saidj and Ms. Zair to basic questions about their conversion were vague, short and not insightful.

[20] Reading the Decision and the RAD's record leaves no doubt that the questions asked were far from a catechesis or theology test. Rather, these were general questions meant to determine the genuineness of the beliefs alleged by the Saidj family, which required an overall basic knowledge of Christianity. I find nothing unreasonable in the RAD's approach. In the end, the

RAD could reasonably conclude that Mr. Saidj and Ms. Zair were not able to provide satisfactory answers (*Ga v Canada (Citizenship and Immigration)*, 2015 FC 1139 at paras 26–27). This conclusion is indeed reasonable because it is based on relevant evidence and on excerpts from Mr. Saidj and Ms. Zair’s testimony, to which the RAD referred extensively throughout the Decision.

[21] At paragraph 10 of *Bouarif*, Justice Roy stated the following:

It is well established in law that it is open to the RPD to assess and consider a refugee protection claimant’s motive for practising a religion, including the genuineness of those religious beliefs, and to rely on that motive in rejecting the refugee protection claim in cases such as this one where the essence of the refugee claim rests on the allegation that continuing a newly acquired religious practice in the country of origin might place the refugee claimant at risk (*Su v Citizenship and Immigration*, 2013 FC 518, at para 18).

[22] The Court must defer to the RPD’s or the RAD’s credibility findings because the administrative decision maker has the benefit of hearing the claimant’s testimony and has expertise in immigration matters. Both the RPD and the RAD are therefore better positioned to assess a claimant’s credibility (*Lawani* at para 22; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 [*Rahal*] at paras 42, 60). This is especially true when the RPD or the RAD must examine the sincerity of a claimant’s religious beliefs, since such an analysis is essentially based on a question of fact (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 94 at para 23; *Li v Canada (Citizenship and Immigration)*, 2015 FC 1273 [*Li 2015*] at para 21).

[23] In light of these principles, I can identify no reason for the Court to intervene in the assessment of the sincerity of Mr. Saidj and Ms. Zair’s religious beliefs. Such an analysis can

certainly prove to be a difficult task for the RPD and the RAD, but I am satisfied that in this case they both performed it reasonably and adequately. The RPD did not go into specific theological aspects, but rather asked relatively basic questions about Christianity. For its part, the RAD relied on the applicants' inability to provide details regarding their path to conversion, on the lack of knowledge about Christianity, on the fact that Mr. Saidj's testimony about his church attendance in Canada is contradicted by a pastor's letter submitted by the Saidj family themselves and on Mr. Saidj's absence at his child's baptism.

[24] I note that the onus is on refugee protection claimants to establish the central elements of their claims and that a claimant's demeanor, including vagueness, may reasonably underpin a negative credibility finding (*Rahal* at para 45). In these circumstances, Mr. Saidj and Ms. Zaire's conversion to Christianity was the main basis of their refugee protection claim. Therefore, all the inconsistencies raised by the RPD and confirmed by the RAD together with Mr. Saidj and Ms. Zair's flawed testimony on that essential aspect of their claim make the Decision fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Vavilov* at para 86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). In other words, it was not unreasonable for the RAD to state that a person who claims to have joined a religion for which that person fears persecution in the country of origin should be able to explain the reasons for that conversion and the path that led to it.

[25] The Saidj family also submits that the RAD "misinterpreted" the pastor's testimony regarding Mr. Saidj's church attendance in Canada. The RAD did not take into account Mr. Saidj's explanations that his work prevented him from attending the Kabyle service and that

he could not attend the other services because he did not speak French well enough. It was also apparently his work that prevented him from attending his child's baptism.

[26] These allegations are unfounded and do not stand up to scrutiny. At paragraphs 33 to 35 of the Decision, the RAD expressly refers to Mr. Saidj's explanation about his work. However, the RAD determined that this explanation was insufficient because it was at odds with the pastor's letter, which stated that the pastor had never met Mr. Saidj. In the same vein, the RAD concluded that Mr. Saidj's working night shifts did not explain why he had missed his child's baptism. The RAD noted that, according to Mr. Saidj's testimony, he had finished work at 7 a.m. that morning. In such circumstances, it was not unreasonable for the RAD to conclude that this explanation was insufficient to explain his absence at that important ceremony, especially considering that Mr. Saidj stated that he had left his country of citizenship mainly to be able to freely practise his religion. Once again, I cannot identify any errors in the RAD's assessment of the evidence on this point.

[27] With respect to the documentary evidence filed by the Saidj family, there is no basis for finding that the RAD's analysis of this aspect is unreasonable. First, it is clear that the RAD did not ignore the evidence. Second, the detailed reasons provided at paragraphs 40 to 45 of the Decision on this aspect eloquently describe why the RAD assigned little weight to that evidence: the documents are short on details, do not identify who signed them and were not provided by people who witnessed the events. Finally, I note that the Saidj family did not submit any evidence linking the general evidence on Algeria to their personal circumstances. I would add that, in some cases, even credible and useful documentary evidence is not sufficient to offset a claimant's lack of credibility regarding their religious beliefs (*Li v Canada (Citizenship and*

Immigration), 2012 FC 998 at para 29; *Cao v Canada (Citizenship and Immigration)*, 2008 FC 1174 at para 28). This is the case here.

[28] Given the RAD's expertise in immigration matters and the deference owed by the Court on issues of credibility, there is no reason to intervene. In light of the RAD's analysis, the evidence on the record and the circumstances surrounding the Saidj family's situation, the RAD's finding that Mr. Saidj and Ms. Zair lacked credibility is reasonable and sufficiently justified. The Decision refers to the documentary evidence filed and to Mr. Saidj and Ms. Zair's testimony. The Decision shows that the RAD provided justified, transparent and intelligible reasons that are based on a reasonable assessment of the facts and the evidence on the record, which is the very basis of a reasonable decision. The Saidj family's arguments invite the Court to reassess the evidence, which the Court is not authorized to do when conducting judicial review on a reasonableness standard (*Vavilov* at para 125; *Bouarif* at para 9; *Li 2015* at para 22).

IV. **Conclusion**

[29] For all of these reasons, the Saidj family's application for judicial review is dismissed. The Saidj family did not demonstrate that the RAD's Decision, which confirmed that their conversion to Christianity was not credible, was unreasonable.

[30] Neither party proposed a question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-7697-21

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.
2. No question of general importance is certified.

“Denis Gascon”

Judge

Certified true translation
Margarita Gorbounova

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7697-21

STYLE OF CAUSE: SAID SAIDJ ET AL v THE MINISTER OF
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